

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In re:)	
)	
PROCEDURES IN AID OF)	ADMINISTRATIVE ORDER
THE ADMINISTRATION OF)	ESTABLISHING PROCEDURE
CHAPTER 13 CASES)	FOR POST-PETITION
)	ATTORNEYS' FEES TO BE
)	EFFECTIVE JULY 1, 2009
)	

The Court has considered this matter and it appears that a standard procedure is warranted for the recovery of certain reasonable attorneys' fees and costs incurred by Debtors and counsel for certain creditors. This procedure should be adopted at this time and should apply to all Chapter 13 cases filed in the Western District of North Carolina on or after July 1, 2009, and to all pending Chapter 13 cases to the extent provided for herein;

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. Definitions:

As used in this Administrative Order, the following definitions shall apply:

a. "Real Property Creditor" is the entity holding or owning an allowed secured claim by virtue of a mortgage, note, deed of trust or other consensual lien on the real property that is the principal residence of the Debtor.

b. "Fixed Fee" is the amount of the flat non-hourly fee as agreed to between the Real Property Creditor and the North Carolina attorney providing the professional services.

c. "Standard Non-Base Fees" for Debtors is the amount of a fixed non-hourly fee for the Debtor's attorney that the Court will consider without the necessity for the filing of detailed time and expense records in support thereof. The Debtor's attorney in lieu of these Standard Non-Base Fees may file a detailed time and expense fee application with a proper motion and notice of hearing.

2. Procedure for Fixed Fee allowance or for Debtor's Attorneys' Fees:

a. In lieu of filing a detailed summary of time and expenses for reasonable fees and expenses arising under the mortgage loan documents and applicable bankruptcy and non-bankruptcy law, the attorney for a Real Property Creditor may:

i. apply for the fees enumerated in Section 3 by motion; or

ii. include in a proof of claim or amended proof of claim such Fixed Fee that is due to the attorney for the Real Property Creditor pursuant to a fixed fee or flat fee agreement or contract between the Real Property Creditor and the North Carolina attorney providing the professional services. Such a proof of claim or amended proof of claim shall be served upon the Debtor and Debtor's attorney. If not objected to, the Chapter 13 Trustee is authorized to disburse and pay upon the claim thirty (30) days from the date of the filing of the claim. Such claim shall then be allowed and paid according to the terms of the Plan.

The Fixed Fee amount set forth in the proof of claim or application may not exceed the lesser of either (a) the amount due to the attorney for the Real Property Creditor pursuant to contract or (b) the presumptive amounts set forth in Section 3 below.

b. The attorney for the Debtor may make a request without supporting time and expense records for additional non-base fees as allowed herein. Such request may also be made as provided for under the Local Rules. The attorney for the Debtor should incorporate these additional fees in the attorney fee agreement for any cases filed on or after July 1, 2009, and should notify the Debtor of such fees in pending cases as the fee generating events occur.

c. Any claim filed with the Chapter 13 Trustee requesting payment of a Fixed Fee shall include an affidavit or affirmation from the attorney of record that he or she is duly admitted to practice law before this Court, was retained by the Real Property Creditor or its duly designated agent, and that no part of the fee has been shared with any third party and no agreement to share any part of the fee has been entered into with any third party.

d. This Administrative Order and the Local Rules shall not be construed to restrict any party in interest from seeking Court approval of other fees and costs greater than the amounts enumerated herein, as allowed under the Bankruptcy Code and Rules.

3. Presumed legal fees for attorneys for Real Property Creditors in Chapter 13 cases:

a. Review of the petition, Plan and loan information and legal advice or counseling to the Real Property Creditor or the servicer on its treatment in the case and or allowance of the Proof of Claim: up to \$250.

b. Responding to objection to claim including attending one hearing if necessary and responding to basic discovery: up to \$450.

c. Objection to confirmation of plan regarding the amount of the pre-petition arrears or the treatment of the Real Property Creditor, including attending one hearing if necessary: up to \$450.

d. Motion to incur debt to allow a loan modification agreement or other similar workout between the Debtor and Real Property Creditor: up to \$450.

e. Motion for relief or for adequate protection: up to \$450 plus the \$150 filing fee.

f. Amended proof of claim in lieu of motion for relief or adequate protection: up to \$450.

g. Consent Order/Judgment in an Adversary Proceeding that is not contested: up to \$350. A matter is contested where a motion to dismiss or a motion for summary judgment has been filed or where the trial has been conducted.

h. Objection to motion to declare mortgage obligations current upon completion of plan: up to \$450 including one court appearance.

i. Amended Proof of Claim: up to \$150 for filing an amended Proof of Claim to include post-petition arrears or fees or charges. Such Fixed Fee shall not be in addition to the Fixed Fee as allowed herein under Section 3(f).

j. All pre-confirmation Fixed Fees for the attorney for the Real Property Creditor or the servicer are subject to a cap of \$1,100 regardless of the services rendered unless the Court orders otherwise. Any additional fees and costs incurred in excess of \$1,100 may be sought only by motion with notice and a hearing

4. Standard non-base fees for Debtors:

a. Objection to Claim: the Debtor's attorney shall be entitled to a non-base fee of \$450 in the event the Debtor makes a good faith objection to the Proof of Claim of the Real Property Creditor.

b. The attorney for the Debtor may apply for a non-base fee of \$450 in connection with his or her consent to an amended proof of claim in lieu of an objection to a secured creditor's motion to modify stay or for adequate protection or pursuant to an amended proof of claim where the Debtor has failed to pay post-petition payments or other amounts due under the terms of the agreement with the Real Property Creditor other than attorneys' fees.

c. The attorney for the Debtor shall be entitled to a non-base fee of \$450 in connection with any motion to incur debt related to approval of a loan modification with the Real Property Creditor. To the extent it is deemed necessary, the Real Property Creditor and/or the attorney for such creditor may enter into direct negotiations with the Debtor's attorney with respect to a loan modification without the necessity of securing any relief from the automatic stay.

d. If a debtor's attorney files a motion to declare mortgage current or similar motion in a non-conduit Plan, then said attorney may move the court for approval of an additional non-base fee of \$450.

e. The attorney for the Debtor may apply for a non-base fee of \$450 in connection with the defense of any motion to modify stay or for adequate protection.

5. Effective Date:

a. This Administrative Order is effective for all Chapter 13 cases filed on or after July 1, 2009.

b. All Sections of this Order shall apply to all pending cases as of the effective date of this Order.

J. Craig Whitley
Chief United States Bankruptcy Judge

George R. Hodges
United States Bankruptcy Judge